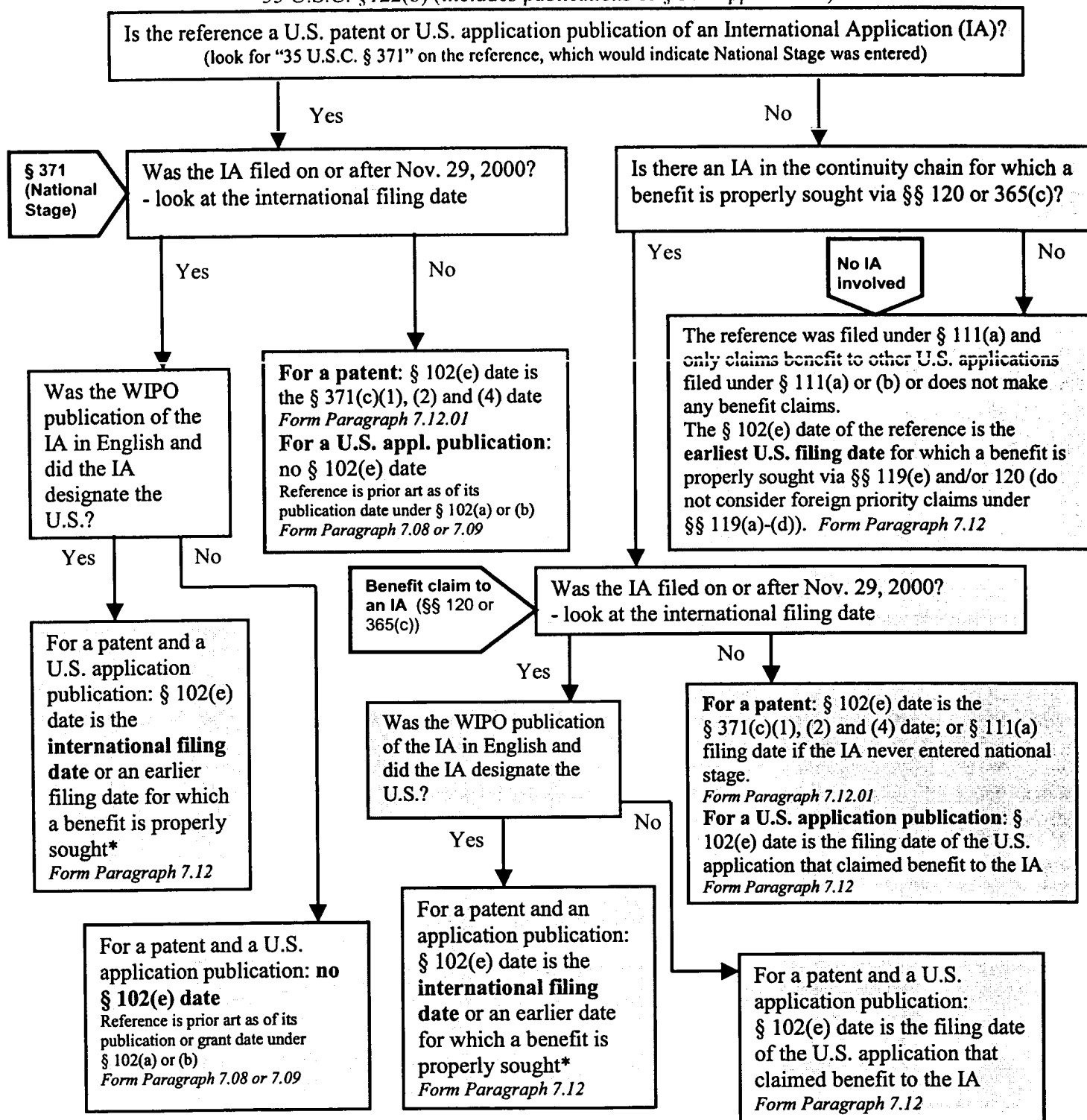# FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
Chart I: For U.S. patent or U.S. patent application publication under 35 U.S.C. §122(b) (includes publications of § 371 applications)

Is the reference a U.S. patent or U.S. application publication of an International Application (IA)?
(look for "35 U.S.C. § 371" on the reference, which would indicate National Stage was entered)

Yes → **No**

§ 371 (National Stage) → Was the IA filed on or after Nov. 29, 2000? - look at the international filing date

Is there an IA in the continuity chain for which a benefit is properly sought via §§ 120 or 365(c)?

Yes → **No IA involved** → No

For a patent: § 102(e) date is the § 371(c)(1), (2) and (4) date
Form Paragraph 7.12.01
For a U.S. appl. publication: no § 102(e) date
Reference is prior art as of its publication date under § 102(a) or (b)
Form Paragraph 7.08 or 7.09

The reference was filed under § 111(a) and only claims benefit to other U.S. applications filed under § 111(a) or (b) or does not make any benefit claims.
The § 102(e) date of the reference is the **earliest U.S. filing date** for which a benefit is properly sought via §§ 119(e) and/or 120 (do not consider foreign priority claims under §§ 119(a)-(d)). *Form Paragraph 7.12*

Was the WIPO publication of the IA in English and did the IA designate the U.S.?

Yes → No

For a patent and a U.S. application publication: § 102(e) date is the **international filing date** or an earlier filing date for which a benefit is properly sought*
Form Paragraph 7.12

Benefit claim to an IA (§§ 120 or 365(c)) → Was the IA filed on or after Nov. 29, 2000? - look at the international filing date

Yes → No

Was the WIPO publication of the IA in English and did the IA designate the U.S.?

Yes → No

For a patent: § 102(e) date is the § 371(c)(1), (2) and (4) date; or § 111(a) filing date if the IA never entered national stage.
Form Paragraph 7.12.01
For a U.S. application publication: § 102(e) date is the filing date of the U.S. application that claimed benefit to the IA
Form Paragraph 7.12

For a patent and a U.S. application publication: **no § 102(e) date**
Reference is prior art as of its publication or grant date under § 102(a) or (b)
Form Paragraph 7.08 or 7.09

For a patent and an application publication: § 102(e) date is the **international filing date** or an earlier date for which a benefit is properly sought*
Form Paragraph 7.12

For a patent and a U.S. application publication: § 102(e) date is the filing date of the U.S. application that claimed benefit to the IA
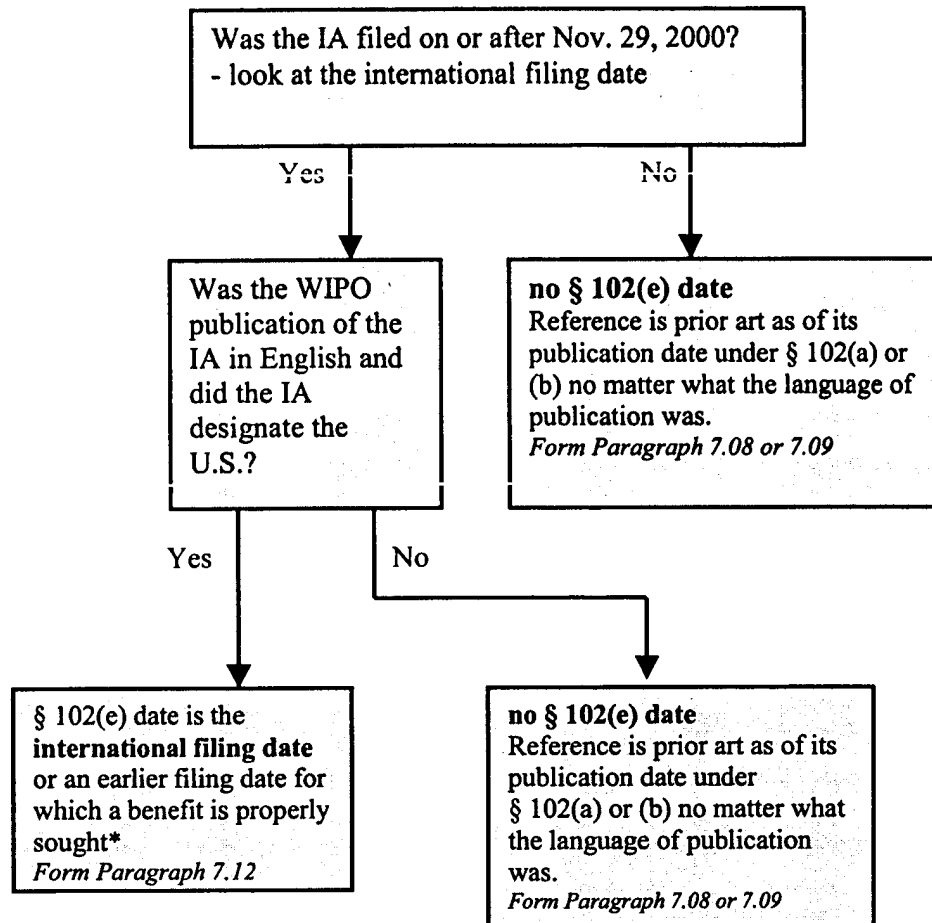*Form Paragraph 7.12*

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
Chart II: For WIPO publication of International Applications (IAs)

Was the IA filed on or after Nov. 29, 2000?
- look at the international filing date

Yes → Was the WIPO publication of the IA in English and did the IA designate the U.S.?

No → **no § 102(e) date**
Reference is prior art as of its publication date under § 102(a) or (b) no matter what the language of publication was.
Form Paragraph 7.08 or 7.09

Yes → § 102(e) date is the **international filing date** or an earlier filing date for which a benefit is properly sought*
Form Paragraph 7.12

No → **no § 102(e) date**
Reference is prior art as of its publication date under § 102(a) or (b) no matter what the language of publication was.
Form Paragraph 7.08 or 7.09

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

Glossary of Terms:

U.S. patent application publication = pre-grant publication by the USPTO under 35 U.S.C. § 122(b)

International application (IA) = an application filed under the Patent Cooperation Treaty (PCT)

§ 371 application = an IA that has entered the national stage in the U.S. (35 U.S.C. § 371(c)(1), (2) and (4))

November 29, 2000 = the effective date for the amendments to §§ 102(e) and 374

WIPO = World Intellectual Property Organization

WIPO Publication = a publication of an IA under PCT Article 21(2) (e.g., Publication No. WO 99/12345)

§ 111(a) = provision of the patent code that states the **filing requirements for nonprovisional applications**

§ 111(b) = provision of the patent code that states the **filing requirements for provisional applications**

§ 119(e) = provision of the patent code that allows for **priority claims to provisional applications**

§ 119(a)-(d) = provision of the patent code that allows for **priority claims to foreign applications**

§ 120 = provision of the patent code that allows for **benefit claims to nonprovisional applications**

§ 365(c) = provision of the patent code that allows for **benefit claims to international applications**